

AMENDED IN SENATE JUNE 27, 2002

AMENDED IN SENATE JUNE 11, 2002

AMENDED IN ASSEMBLY APRIL 25, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1957

Introduced by Assembly Member Robert Pacheco
(Coauthors: Assembly Members Bates, Bill Campbell, Correa,
Goldberg, Harman, Strom-Martin, and Zettel)
(Coauthor: Senator ~~Ortiz~~ Ortiz)

February 14, 2002

An act to ~~amend Section 2920 of~~ *add Section 2920.5 to* the Probate Code, relating to public guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 1957, as amended, Robert Pacheco. Public guardians: criminal history information.

Existing law provides that a public guardian is a county officer and permits a public guardian to be appointed as a conservator for a person when no one else is available who is qualified and willing to act and when the appointment of a guardian or conservator would be in the best interest of the person, as specified.

~~This bill would permit a public guardian, providing services pursuant to specified conservatorship provisions, or a county conservatorship investigator, as defined, to submit fingerprints and related information to the Department of Justice on a person being investigated as a potential conservator or a person who has offered to provide assistance that may make a conservatorship unnecessary, except as specified.~~

This bill would permit, until January 1, 2007, a public guardian, as specified, or a county conservatorship investigator, as defined, upon a referral from a court or an adult protective services agency, to submit fingerprints and related information to the Department of Justice on a person being considered as a conservator or potential conservator, except as specified. The bill would require the Department of Justice to provide a record of specified convictions and arrests. The bill would prohibit the Department of Justice from retaining fingerprints and related information to provide subsequent arrest information. The bill would require the Department of Justice to charge a fee to cover the cost of processing these requests, to be paid by the requesting agency. The bill would also require that criminal records information received by a public guardian and disclosed to the attorney of a proposed conservatee be kept confidential, except as specified. The bill would require that the information be disclosed to the subject of the background check. The bill would also require the Judicial Council to make a specified report to the Legislature by January 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2920 of the Probate Code is amended to~~
- 2 SECTION 1. Section 2920.5 is added to the Probate Code, to
- 3 read:
- 4 2920.5. (a) (1) When a court or an agency designated to
- 5 perform adult protective services refers a conservatee or potential
- 6 conservatee to a person or entity listed in paragraph (2), that
- 7 person or entity may submit to the Department of Justice the
- 8 fingerprints of, and information regarding, a person who is being
- 9 investigated as a potential conservator or who has offered to
- 10 provide assistance that may make a conservatorship unnecessary.
- 11 The Department of Justice shall provide the information described
- 12 in subdivision (b). Fingerprints taken by the use of live-scan
- 13 technology may be submitted.
- 14 (2) The following persons and entities are authorized to make
- 15 submissions pursuant to subdivision (a):
- 16 (A) A public guardian providing conservatorship services
- 17 pursuant to this part or Chapter 3 (commencing with Section 5350)
- 18 of Part 2 of Division 5 of the Welfare and Institutions Code.

1 (B) An agency designated as a county conservatorship
2 investigator pursuant to Section 5351 of the Welfare and
3 Institutions Code.

4 (b) Upon a proper request pursuant to the provisions of
5 subdivision (a), the Department of Justice shall provide
6 information to the requesting person or agency regarding the
7 existence and nature of the following:

8 (1) Every conviction rendered against the subject of the request
9 for a violation or attempted violation of an offense specified in
10 subdivision (a) of Section 15660 of the Welfare and Institutions
11 Code. However, excepting those offenses for which registration is
12 required pursuant to Section 290 of the Penal Code, the
13 Department of Justice may only provide information on a
14 conviction that occurred within 10 years of the date of the request,
15 or on a conviction that occurred over 10 years after the date of the
16 request, if the subject of the request was incarcerated within 10
17 years of the date of the request.

18 (2) Every arrest for a violation or attempted violation of an
19 offense specified in subdivision (a) of Section 15660 of the Welfare
20 and Institutions Code that the Department of Justice has
21 established is still pending and for which the subject of the request
22 is presently awaiting trial, whether the subject of the request is
23 incarcerated, or has been released of bail or on his or her own
24 recognizance pending trial.

25 (c) The Department of Justice may not retain fingerprints or
26 related information submitted pursuant to this subdivision to
27 provide subsequent arrest notification pursuant to Section 11105.2
28 of the Penal Code.

29 (d) The Department of Justice shall charge a fee sufficient to
30 cover the cost of processing a request for information pursuant to
31 this section. This fee shall be paid by the requesting agency.

32 (e) Notwithstanding subdivision (a), a private professional
33 conservator who is in compliance with the requirements of Section
34 2342 in the county conducting the investigation may not be the
35 subject of a background check pursuant to this section.

36 (f) The criminal records information received by a public
37 guardian shall be kept confidential, except that it may be disclosed
38 under seal to the court and to the attorney for the person for whom
39 a conservatorship is being considered, when the appointment of a
40 conservator as an alternative to the public guardian is being

1 considered by the court. The person or entity described in
2 paragraph (2) of subdivision (a) shall disclose the information
3 provided by the Department of Justice to the subject of the
4 background check. The attorney for the proposed conservatee
5 shall keep any disclosed criminal records information
6 confidential.

7 (g) The Judicial Council by January 1, 2006, shall conduct a
8 study for the Legislature, that shall include, but not be limited to,
9 the following:

10 (1) The annual number of requests for information that were
11 brought pursuant to this section, enumerated separately by county
12 and for the state.

13 (2) The advantages and disadvantages of the provision of
14 information pursuant to this section in conservatorships and in
15 cases that a conservatorship was found unnecessary.

16 (3) An evaluation of whether this information helped the public
17 guardian or other person or entity in assessing the competency and
18 trustworthiness of a potential conservator.

19 (h) This section shall remain in effect only until January 1,
20 2007, and as of that date is repealed, unless a later enacted statute,
21 that is enacted before January 1, 2007, deletes or extends that date.
22 read:

23 ~~2920. If any person domiciled in the county requires a~~
24 ~~guardian or conservator and there is no one else who is qualified~~
25 ~~and willing to act and whose appointment as guardian or~~
26 ~~conservator would be in the best interest of the person:~~

27 ~~(a) The public guardian may apply for appointment as guardian~~
28 ~~or conservator of the person, the estate, or the person and estate.~~

29 ~~(b) The public guardian shall apply for appointment as~~
30 ~~guardian or conservator of the person, the estate, or the person and~~
31 ~~estate, if the court so orders. The court may make an order under~~
32 ~~this subdivision on motion of an interested person or on the court's~~
33 ~~own motion in a pending proceeding or in a proceeding~~
34 ~~commenced for that purpose. The court shall not make an order~~
35 ~~under this subdivision except after notice to the public guardian for~~
36 ~~the period and in the manner provided in Chapter 3 (commencing~~
37 ~~with Section 1460) of Part 1, consideration of the alternatives, and~~
38 ~~a determination by the court that the appointment is necessary. The~~
39 ~~notice and hearing under this subdivision may be combined with~~

1 the notice and hearing required for appointment of a guardian or
2 conservator.

3 ~~(e) (1) A public guardian providing conservatorship services~~
4 ~~pursuant to this part or Chapter 3 (commencing with Section 5350)~~
5 ~~of Part 2 of Division 5 of the Welfare and Institutions Code, or an~~
6 ~~agency designated as a county conservatorship investigator~~
7 ~~pursuant to Section 5351 of the Welfare and Institutions Code, may~~
8 ~~submit fingerprints and related information on a person who is~~
9 ~~being investigated as a potential conservator, or on a person who~~
10 ~~has offered to provide assistance that may make a conservatorship~~
11 ~~unnecessary, to the Department of Justice to obtain information~~
12 ~~pursuant to paragraph (2). Fingerprints submitted pursuant to this~~
13 ~~subdivision may include fingerprints taken by the use of live-scan~~
14 ~~technology.~~

15 ~~(2) Upon a proper request pursuant to the provisions of~~
16 ~~paragraph (1), the Department of Justice shall provide information~~
17 ~~to the requesting agency regarding the existence and nature of all~~
18 ~~of the following:~~

19 ~~(A) All convictions rendered against the subject of the~~
20 ~~background check.~~

21 ~~(B) All arrests for an offense for which the subject of the~~
22 ~~background check is presently awaiting trial, whether the subject~~
23 ~~is incarcerated or has been released on bail or on his or her own~~
24 ~~recognizance pending trial.~~

25 ~~(3) The Department of Justice may not retain fingerprints or~~
26 ~~related information submitted pursuant to this subdivision to~~
27 ~~provide subsequent arrest notification pursuant to Section 11105.2~~
28 ~~of the Penal Code.~~

29 ~~(d) The Department of Justice shall charge a fee sufficient to~~
30 ~~cover the cost of processing a request for information pursuant to~~
31 ~~subdivision (e). This fee shall be paid by the requesting agency.~~

32 ~~(e) Notwithstanding subdivision (c), a private professional~~
33 ~~conservator who is in compliance with the requirements of Section~~
34 ~~2342 in the county conducting the investigation may not be the~~
35 ~~subject of a background check pursuant to this section.~~

36 ~~(f) The criminal records information received by a public~~
37 ~~guardian shall be kept confidential, except that it may be disclosed~~
38 ~~under seal to the court and to the attorney for the person for whom~~
39 ~~a conservatorship is being considered, when the appointment of a~~
40 ~~conservator as an alternative to the public guardian is being~~

1 considered by the court. The attorney for the proposed conservatee
2 shall keep any disclosed criminal records information
3 confidential.

